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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,843	12/03/2004	Jan Hoogerbrugge	NL02 0480 US	7262
65913	7590	10/13/2009		
NXP, B.V.			EXAMINER	
NXP INTELLECTUAL PROPERTY & LICENSING			AYASHI, MARWAN	
M/S41-SJ				
1109 MCKAY DRIVE			ART UNIT	PAPER NUMBER
SAN JOSE, CA 95131			2185	
			NOTIFICATION DATE	DELIVERY MODE
			10/13/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

Advisory Action Before the Filing of an Appeal Brief		Application No. 10/516,843	Applicant(s) HOOGERBRUGGE ET AL.
		Examiner MARWAN AYASH	Art Unit 2185
<p>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</p> <p>THE REPLY FILED 21 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires 3 months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____. Claim(s) objected to: _____. Claim(s) rejected: 1-23 Claim(s) withdrawn from consideration: _____.</p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see below</u>.</p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____.</p>			

/Sanjiv Shah/
Supervisory Patent Examiner, Art Unit 2185

/Marwan Ayash/
Examiner, Art Unit 2185

Regarding applicant's remarks on page 11 summarized as, "In fact, the rejection of claim 1 is improper and should be withdrawn because the Office Action does not establish a *prima facie* rejection for the claim. In order to establish a *prima facie* rejection of a claim under 35 U.S.C. 103, the Office Action must present a clear articulation of the reason why the claimed invention would have been obvious. MPEP 2142 (citing KSR International Co. v. Teleflex Inc., 550 U.S. (2007) ... From this statement, it appears that the reasoning presented in the Office Action relies on two possible rationales. First, the Office Action relies on a conclusion that interconnecting structural or functional elements in the manner claimed would facilitate the proper operation of the claimed invention. Second, the Office Action relies on a conclusion that the arrangement of elements would be obvious as one of only a finite number of possibilities."

In particular applicant argues (page 12) "In regard to the first possible rationale, while it is not clear which "invention" is referred to in the Office Action (the "invention" of the present application or an "invention" of one of the cited references), the assertion that connecting components in the manner claimed would facilitate operation of the invention of the present application does not address the proposed combination of cited references. Rather, such a statement appears to merely support the operation of the present invention, without supporting a combination of the teachings from the cited references. Moreover, to the extent that the Office Action relies on the operations described in the present application as support for the proposed combination of cited references, such reliance would be improper because it relies on impermissible hindsight. In other words, the Office Action's reliance on the reasoning described in the present application is improper and cannot be used to support for the proposed combination of cited references." [The examiner is referring to the Myers invention and not to applicant's claimed invention. The interconnection of components as claimed, and taught by Myers is advantageous in facilitating the proper operation of Myers invention as different interconnections may not allow for Myers invention to function as intended in the disclosure of Myers invention]

Further, applicant argues (pages 12-13) "In regard to the second possible rationale, the Office Action concludes that it would purportedly be obvious to implement the recited arrangement of elements because a finite number of elements can only be connected together in a finite number of ways. As a general statement, this assertion may be practical, but this general statement regarding a finite number of ways to connect a finite number of elements does not address or establish a reason for the specific arrangement recited in the claims. Moreover, the fact that an arrangement is possible, does not show a reason why one skilled in the art might be motivated to implement the specific arrangement. In fact, depending on the functionality of each element, there are several possible arrangements using a finite number of elements, many of which simply would not result in an overall functional system. Additionally, this line of reasoning requires additional findings by the Examiner, which are not provided in the Office Action. In general, this type of argument relies on an "obvious to try" argument. In order to support an "obvious to try" argument, the Examiner must articulate four separate findings: 1) A finding that at the time of the invention, there had been a recognized problem or need in then art, which may include a design need or market pressure to solve a problem; 2) A finding that there had been a finite number of identified, predictable potential solutions to the recognized need or problem; ... Here, the Office Action fails to satisfy at least the first two requirements because the Office Action does not attempt to identify a recognized problem in the art to which the combination of teachings might have been directed. While each cited reference apparently addresses a separate problem by itself, there is no assertion or finding of any recognized problem or need for the proposed combination, other than to rely on impermissible hindsight in addressing issues that are only described in the present application. More specifically, there is no assertion or finding of a recognized problem or need in the art, at the time of the invention, for which one skilled in the art might pursue different arrangements of the components described in the proposed combination of Robertson, Myers, and Bender." [The examiner submits that Robertson has identified a problem/need in the art in the summary of the invention in Col 2-3 and that Robertson has disclosed the functional components performing substantially similar functions as the claimed invention. The fact that Robertson does not explicitly disclose the particular interconnection of the substantially similar functional elements does not patentably distinguish the claims over the cited art. A skilled artisan would have been motivated to arrange the functional components of Robertson, performing substantially similar functions as the claimed invention, in such a was as to enable them to render the system functional. Myers shows that the claimed arrangement is not unique or novel and does not distinguish the claims beyond what would have been an obvious modification of Robertson.]